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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,135	01/07/2004	L. Ross Allen	47911/267214	4427
826	7590	07/22/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			CHAPMAN, JEANETTE E	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/753,135	Applicant(s) ALLEN, L. ROSS	
	Examiner Chapman E. Jeanette	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 9 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Handwritten signature/initials

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9,21-24, 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Cherry (1677130) in view of Williams (6401401).

Cherry discloses a flashing, figure 3, for use in a portal installation opening defined by a sill and jambs 14 and 10/11. The flashing comprising

1. a base member having first portions 18,19,20 and second portions 24/23/31/29; the second portions is disposed at an angle relative to the first portion such that the outer surface of the first portion 18 is disposed against the sill 14 of the opening, figure 1 and an outer surface of the second portion 24 is disposed against the jambs 10/11
2. the first and second portions define right and left angle corners
3. the first and second portions of the base member are perpendicular
4. the outer surface of the first and second portions of the base member are planar
5. Corrugations are and can be tapered channels as shown in figures 2-4 of Cherry defining an increased depth at the front of the face plate; Cherry shows triangularly configured channels

6. first and second portions of the base member defines opposite inner and outer surfaces; the outer surface is disposed against the sill and jamb and the inner surface defining channels 21 and ridges 22 between the channels; the ridges are parallel to the outer surface and structured to support the portal
7. a front face plate 27 extending perpendicularly from the first portion but not the second portion; Williams discloses a front face plate 41 and 42 extending from the first and second portions 43 and 44 ; it would have been obvious to extend the front face plate as shown by Williams in order to give the portal further protection.
8. A plurality of channels 22 disposed in each of the first and second portions of the base member directing water toward and through the front face plate
9. Cherry lacks the flashing of common materials such as molded plastic; however, Williams discloses the use of plastic and the form this plastic assumes prior to installation has been considered a matter of choice. One of ordinary skill in the art would have known of the materials commonly used today and would have selected any material capable of fulfilling the intended use, purpose and function of the flashing device.
10. the first and second portions include opposite end edges which are parallel to each other
11. the front face plate 27 extends from one of the end edges
12. the flashing is structured to be configured with the outer surface the outer skirt surface of the first portion disposed toward one of the jambs and the outer

surface of the second portion disposed toward the sill so that the flashing can be selectively installed in either two corners of an opening; see figure 4 and figure 1

13. A base member having first and second generally flat portions which are joined to each other to define a right angle corner therebetween, said first and second portions defining respective inner surfaces which are disposed on the inside of the right angled corner and outer surface which are disposed on the outside of the right angled corner and so that the outer surfaces are parallel to and face oppositely from respective ones of the inner surfaces, with the first and second portions each having parallel opposite end edges, and with the end edges of the first portion lying in respective common planes with the end edges of the second portion; see figures 2-4

Claims 8 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherry (1677130) in view of Williams (6401401). Rutherford shows a flashing member with channels in first and second portions and the channels do not extend through the end edges of the first and second portions; see figure 1. It would have been obvious to one of ordinary skill in the art to alternatively fashion the flashing of Cherry to not extend as stated above in order to provide a smoother transition between the face plate and the first and second portions.

Response to Arguments

Applicant's arguments with respect to THE ABOVE CLAIMS have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeanette Chapman
Primary Examiner